

State of Idaho

Send invoices to the
address listed
below or as indicated in the
comments or instructions
field
Boise, ID 83720-0075



State of Idaho

THIS NUMBER MUST
APPEAR
ON ALL DOCUMENTS

Participating Addendum
PADD1039

Participating Addendum

DELIVER TO: State of Idaho Various Agencies
Various State Agencies
located throughout Idaho

Various, ID 83701

Date: Thu Oct 18, 2007
F.O.B: Destination
Terms:

VENDOR: T-MOBILE USA
5242 South College Dr., Ste. 170
Murray, UT 84123
Attn: Business Sales Manager
Vendor Nbr:
Emailed To: liz.beyer@t-mobile.com
Phone: 801 860-1111
Fax: 801 284-1100
Account Number: P00000068711

Start of Service
Date: Mon Aug 20, 2007

End of Service
Date: Sat Oct 09, 2010

RFQ#: [RFQ06098](#)
DOC#: [PREQ13294](#)

File(s) Attached:



TmobileWirelessParticipatingAddendum10172007.pdf

Buyer: [MARK LITTLE](#) 208-332-1611

Item No	Description	Quantity UOM	Unit Price	EXTENSION
000	BLANKET PURCHASE AGREEMENT (line item particulars follow)	1 lot		1000000.00
	Total:			1000000.00
Blanket Comments:				

Item No	Description	Quantity UOM	Unit Price	EXTENSION
001	Wireless Communication Services and Equipment (Cellular Telephones) pursuant to WSCA Master Price Agreement (Nevada RFP/Contract Number 1523) from T-Mobile USA and the attached documentation. The price is an estimate only and can not be guaranteed.	1 LOT	1000000.00	1000000.00

	(915-75) (nt)			
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General Comments:	<p>NOTICE OF STATEWIDE CONTRACT PADD1039 AWARD</p> <p>Contract for WIRELESS Communications Services and Equipment pursuant to Western States Contracting Alliance (WSCA) and MASTER PRICE AGREEMENT 1523(NEVADA). The contract is for the benefit of State of Idaho Agencies, institutions, and departments and eligible political subdivisions or public agencies as defined by Idaho Code, Section 67-2327. The Division of Purchasing or the requisitioning agency will issue individual releases (delivery or purchase orders) against this Master Contract on an as needed basis for a period of three years commencing September 15, 2004 and ending September 14, 2007.</p> <p>Contract Title:.....Wireless Communications Services and Equipment Contract Usage Type:.....Mandatory Public Agency Clause:Yes Contract Administration:....Mark Little ---Phone Number:.....208-322-1611 ---E-Mail:.....mark.little@adm.idaho.gov</p> <p>Contractor's Primary Contacts ---Attn:.....Karen Barton ---Address:..... 5242 South College Dr. Suite 170 ---City, State, Zip:.....Murray, UT 84123 Phone Number:.....801-860-0359 Fax:.....801-284-1100 E-Mail:.....karen.barton@t-mobile.com</p> <p>CONTRACTOR: Ship to the FOB DESTINATION point and BILL DIRECTLY to the ORDERING AGENCY. DO NOT MAIL INVOICES TO THE DIVISION OF PURCHASING. Notating the Contract Award Number on any invoices/statement will facilitate the efficient processing of payment.</p>

Instructions:	
Freight / Handling Included in Price	
	By: MARK LITTLE

PARTICIPATING ADDENDUM
State of Idaho Contract Number PADD 1037

WESTERN STATES CONTRACTING ALLIANCE
T-MOBILE USA
MASTER PRICE AGREEMENT
Nevada RFP/Contract Number 1523

1. Scope: All state governmental entities within the State of Idaho and public agencies (as defined by Idaho Code, Section 67-2327) are authorized to purchase products and services under the terms and conditions of the Nevada Contract (Master Price Agreement). These public agencies include any city or political subdivision of the State of Idaho, including, but not limited to counties; school districts; highway districts; port authorities; instrumentalities of counties, cities, or any political subdivision created under the laws of the State of Idaho; and public schools and institutions of higher education. It will be the responsibility of the public agency to independently contract (i.e., issue purchase orders) with the contractor and/or comply with any other applicable provisions of Idaho Code governing public contracts.

2. Applicable Approved Purchasing Agreement: The following provisions supplement and/or add to the Master Price Agreement.

a. Parties to this Participating Addendum

The parties to this Participating Addendum (PA) are T-Mobile USA, Inc. (Contractor) and the State of Idaho by and through its statutory agent, the Division of Purchasing within the Department of Administration (State) on behalf of the entities identified in the paragraph titled "Scope" of this Participating Addendum (procuring agencies).

b. Idaho Administration Reporting and Fees:

The contractor agrees to provide electronic (Microsoft Excel or similar) semi-annual price agreement utilization reports to the Idaho administrator in accordance with the following schedule:

<u>Period End</u>	<u>Report Due</u>
September 30	October 31
March 31	April 30

The Contractor will submit quarterly reports to the Idaho Administrator. These reports shall include (for tax id accounts only):

- To Date
- From Date
- Tax ID
- Account Number
- Account Name
- Total Minutes Used
- Total Number of Active Lines

- Total Quarterly Spend

The quarterly reports shall be accompanied by an administrative fee check payable to the Treasurer, State of Idaho for an amount equal to one percent (1%) of the gross Idaho sales (less returns and credits) for the applicable previous quarterly period. The State understands and agrees that Contractor, in order to accommodate the State's requirement of such a one percent (1%) administrative fee, may reduce the aggregate volume discount negotiated in Paragraph 6 of the Nevada Price Agreement to 12% off of the State's recurring monthly service charges. The above described quarterly report and administrative fee will be provided within thirty (30) calendar days after the close of the applicable quarter.

c. Applicable Law:

Notwithstanding Paragraph 5 (Order of Precedence) of Nevada RFP/Contract Number 1523 or Paragraph 28 (Governing Law; Jurisdiction), Nevada RFP/Contract Number 1523 is supplemented with the following, which shall apply to this PA.

The State of Idaho's PA and all purchase orders issued thereunder by procuring agencies shall be construed in accordance with, and governed by the laws of the State of Idaho. Any action to enforce the provisions of this PA shall be brought in state district court in Ada County, Boise, Idaho. In the event any term of this PA is held to be invalid or unenforceable by a court, the remaining terms of this PA will remain in force. The terms and conditions of the Master Price Agreement will apply to any and all services performed, including any services performed by a subcontractor to the contractor. No other terms or conditions will apply without the express written agreement of the State and Contractor.

d. Discount:

In Paragraph 6, "Consideration," of Nevada Price Agreement No. 1523, the reference to "15%" is deleted and replaced with "12%."

e. Assignment:

Paragraph 39 (Assignment) of Nevada Price Agreement No. 1523 is deleted in its entirety and replaced with the following:

ASSIGNMENTS: No contract or order or any interest therein shall be transferred by the Contractor to whom such contract or order is given to any other party, without the approval in writing of the Administrator, Division of Purchasing. Transfer of a contract without approval shall cause the annulment of the contract so transferred, at the option of the State. All rights of action, however, for any breach of such contract by the contracting parties are reserved to the State. (Idaho Code Section 67-5726(1))

3. Lease Agreements: A lease agreement has not been approved for use for procuring agencies within the State of Idaho.

4. Primary Contact: The primary contact and administrator of this agreement for the State of Idaho is as follows:

Gregory Lindstrom, IT Purchasing Officer
Division of Purchasing
5569 Kendall Street (Zip 83706-1231)
P O Box 83720
Boise, ID 83720-0075
Ph: 208-332-1609

5. Master Price Agreement Number: All purchase orders issued by procuring agencies within the jurisdiction of this participating addendum shall include the following price agreement numbers:

1523 (Nevada)
PADD 1037 (Idaho)

6. Subcontractors: Only the following subcontractors are authorized to perform services.

NONE

There are no subcontractors approved at this time. In the future, any subcontractors (including any activation and/or ordering affiliates, also known as Certified Dealers or Partners) must be approved by the State. Such subcontractors shall be thoroughly trained in the Master Price Agreement ordering and contracting process.

This PA and the Nevada Price Agreement together with its exhibits, set forth the entire agreement between the parties with respect to the subject matter of all previous communications, representations or agreements, whether oral or written, with respect to the subject matter hereof. Terms and conditions inconsistent with, contrary or in addition to the terms and conditions of this PA and the Nevada Price Agreement, together with its exhibits, shall not be added to or incorporated into this PA or the Nevada Price Agreement and its exhibits, by any subsequent purchase order or otherwise, and any such attempts to add or incorporate such terms and conditions are hereby rejected. The terms and conditions of this PA and the Nevada Price Agreement and its exhibits shall prevail and govern in the case of any such inconsistent or additional terms.

IN WITNESS HEREOF, the parties have executed this Addendum as of the date of execution by both parties below.

State of Idaho
Division of Purchasing

By: 

Name: Mark A. Little

Title: Purchasing Manager

Date: 11/27/07

Contractor: T-Mobile USA, Inc.

By: 

Name: Ian Mackay

Title: Vice President – Business Sales

Date: 10.12.07

T-Mobile Legal Approval By:



CONTRACT FOR SERVICES OF INDEPENDENT CONTRACTOR

A Contract Between the State of Nevada
Acting By and Through Its

Various State Agencies
Monitored By: Department of Administration
Purchasing Division
515 E Musser Street, Room 300
Carson City NV 89701
Contact: Teri Smith, Senior Buyer
Phone: (775) 684- 0178 • Fax: (775) 684-0188
Email: tlsmith@purchasing.state.nv.us

and

T-Mobile USA
5242 South College Dr., Ste. 170
Murray UT 84123
Contact: Liz Beyer, Business Sales Manager
Phone: (801) 860-1111 • Fax: (801) 284-1100
Email: Liz.Beyer@T-Mobile.com

WHEREAS, NRS 284.173 authorizes elective officers, heads of departments, boards, commissions or institutions to engage, subject to the approval of the Board of Examiners, services of persons as independent contractors; and

WHEREAS, it is deemed that the service of Contractor is both necessary and in the best interests of the State of Nevada;

NOW, THEREFORE, in consideration of the aforesaid premises, the parties mutually agree as follows:

1. **REQUIRED APPROVAL.** This Contract shall not become effective until and unless approved by the Nevada State Board of Examiners.
2. **DEFINITIONS.** "State" means the State of Nevada and any state agency identified herein, its officers, employees and immune contractors as defined in NRS §41.0307. "Independent Contractor" means a person or entity that performs services and/or provides goods for the State under the terms and conditions set forth in this Contract. "Fiscal Year" is defined as the period beginning July 1 and ending June 30 of the following year.
3. **CONTRACT TERM.** This Contract shall be effective upon Board of Examiners' approval (anticipated to be October 10, 2006) to October 9, 2010, unless sooner terminated by either party as specified in paragraph (10).
4. **NOTICE.** Unless otherwise specified, termination shall not be effective until 60 calendar days after a party has served written notice of default, or without cause upon the other party. All notices or other communications required or permitted to be given under this Contract shall be in writing and shall be deemed to have been duly given if delivered personally in hand, by telephonic facsimile with simultaneous regular mail, or mailed certified mail, return receipt requested, postage prepaid on the date posted, and addressed to the other party at the address specified above.
5. **INCORPORATED DOCUMENTS.** The parties agree that the scope of work shall be specifically described; this Contract incorporates the following attachments in descending order of constructive precedence; a Contractor's Attachment shall not contradict or supersede any State specifications, terms or conditions without written evidence of mutual assent to such change appearing in this Contract:

ATTACHMENT AA:	STATE SOLICITATION (RFP #1523) and AMENDMENTS 1 & 2;
	SCOPE OF WORK
ATTACHMENT BB:	NEGOTIATED ITEMS
ATTACHMENT CC:	CONTRACTOR'S RESPONSE
ATTACHMENT DD:	T-MOBILE SPECIAL TERMS AND CONDITIONS FOR WSCA REQUEST

FOR PROPOSAL ("RFP")

6. CONSIDERATION. The parties agree that Contractor will provide the services specified in paragraph (5) at a cost of **a 15% Discount on recurring monthly charges; \$40.00 discount on Equipment; 20% discount on accessories;** the total Contract or installments payable: **Monthly upon receipt of vendor statement**, not to exceed **\$500,000.00**. The State does not agree to reimburse Contractor for expenses unless otherwise specified in the incorporated attachments. **The contractual authority, as identified by the not to exceed amount, does not obligate the State of Nevada to expend funds or purchase goods or services up to that amount; the purchase amount will be controlled by the individual using agency's purchase orders or other authorized means of requisition for services and/or goods as submitted to and accepted by the contractor.** Any intervening end to a biennial appropriation period shall be deemed an automatic renewal (not changing the overall Contract term) or a termination as the results of legislative appropriation may require.

7. ASSENT. The parties agree that the terms and conditions listed on incorporated attachments of this Contract are also specifically a part of this Contract and are limited only by their respective order of precedence and any limitations specified.

8. TIMELINESS OF BILLING SUBMISSION. The parties agree that timeliness of billing is of the essence to the contract and recognize that the State is on a fiscal year. All billings for dates of service prior to July 1 must be submitted to the State no later than the first Friday in August of the same year. A billing submitted after the first Friday in August, which forces the State to process the billing as a stale claim pursuant to NRS 353.097, will subject the Contractor to an administrative fee not to exceed \$100.00. The parties hereby agree this is a reasonable estimate of the additional costs to the State of processing the billing as a stale claim and that this amount will be deducted from the stale claim payment due to the Contractor.

9. INSPECTION & AUDIT.

a. Books and Records. Contractor agrees to keep and maintain under generally accepted accounting principles (GAAP) full, true and complete records, contracts, books, and documents as are necessary to fully disclose to the State or United States Government, or their authorized representatives, upon audits or reviews, sufficient information to determine compliance with all state and federal regulations and statutes.

b. Inspection & Audit. Contractor agrees that the relevant books, records (written, electronic, computer related or otherwise), including, without limitation, relevant accounting procedures and practices of Contractor or its subcontractors, financial statements and supporting documentation, and documentation related to the work product shall be available at T-Mobile's business offices during normal business hours for inspection, examination, review, audit, and copying at any office or location of Contractor where such records may be found, with or without notice by the State Auditor, the relevant state agency or its contracted examiners, the Department of Administration, Budget Division, the Nevada State Attorney General's Office or its Fraud Control Units, the State Legislative Auditor, and with regard to any federal funding, the relevant federal agency, the Comptroller General, the General Accounting Office, the Office of the Inspector General, or any of their authorized representatives. All subcontracts shall reflect requirements of this paragraph. Further, due to the highly sensitive and proprietary of some of T-Mobile's records, any third party auditor acting on behalf of the State shall be subject to prior approval by T-Mobile and may be required at T-Mobile's sole discretion to execute T-Mobile's standard Non-Disclosure Agreement prior to examining, inspecting, copying or auditing T-Mobile's records.

c. Period of Retention. All books, records, reports, and statements relevant to this Contract must be retained a minimum three years and for five years if any federal funds are used in the Contract. The retention period runs from the date of payment for the relevant goods or services by the State, or from the date of termination of the Contract, whichever is later. Retention time shall be extended when an audit is scheduled or in progress for a period reasonably necessary to complete an audit and/or to complete any administrative and judicial litigation which may ensue.

10. CONTRACT TERMINATION.

a. Termination Without Cause. Any discretionary or vested right of renewal notwithstanding, this Contract may be terminated upon written notice by mutual consent of both parties or unilaterally by either party without cause.

b. State Termination for Nonappropriation. The continuation of this Contract beyond the current biennium is subject to and contingent upon sufficient funds being appropriated, budgeted, and otherwise made available by the State Legislature and/or federal sources. The State may terminate this Contract, and Contractor waives any and all claim(s) for damages, effective immediately upon receipt of written notice (or any date specified therein) if for any reason the Contracting Agency's funding from State and/or federal sources is not appropriated or is withdrawn, limited, or impaired.

c. Cause Termination for Default or Breach. A default or breach may be declared with or without termination. This Contract may be terminated by either party upon written notice of default or breach to the other party as follows:

i. If Contractor fails to provide or satisfactorily perform any of the conditions, work, deliverables, goods, or services called for by this Contract within the time requirements specified in this Contract or within any granted extension of those time requirements; or

- ii. If any state, county, city or federal license, authorization, waiver, permit, qualification or certification required by statute, ordinance, law, or regulation to be held by Contractor to provide the goods or services required by this Contract is for any reason denied, revoked, debarred, excluded, terminated, suspended, lapsed, or not renewed; or
 - iii. If Contractor becomes insolvent, subject to receivership, or becomes voluntarily or involuntarily subject to the jurisdiction of the bankruptcy court; or
 - iv. If the State materially breaches any material duty under this Contract and any such breach impairs Contractor's ability to perform; or
 - v. If it is found by the State that any quid pro quo or gratuities in the form of money, services, entertainment, gifts, or otherwise were offered or given by Contractor, or any agent or representative of Contractor, to any officer or employee of the State of Nevada with a view toward securing a contract or securing favorable treatment with respect to awarding, extending, amending, or making any determination with respect to the performing of such contract; or
 - vi. If it is found by the State that Contractor has failed to disclose any material conflict of interest relative to the performance of this Contract.
- d. **Time to Correct.** Termination upon a declared default or breach may be exercised only after service of formal written notice as specified in paragraph (4), and the subsequent failure of the defaulting party within 30 calendar days of receipt of that notice to provide evidence, satisfactory to the aggrieved party, showing that the declared default or breach has been corrected.
- e. **Winding Up Affairs Upon Termination.** In the event of termination of this Contract for any reason, the parties agree that the provisions of this paragraph survive termination:
- i. The parties shall account for and properly present to each other all claims for fees and expenses and pay those which are undisputed and otherwise not subject to set off under this Contract. Neither party may withhold performance of winding up provisions solely based on nonpayment of fees or expenses accrued up to the time of termination;
 - ii. Contractor shall satisfactorily complete work in progress at the agreed rate (or a pro rata basis if necessary) if so requested by the Contracting Agency;
 - iii. Contractor shall execute any documents and take any actions necessary to effectuate an assignment of this Contract if so requested by the Contracting Agency;
 - iv. Contractor shall preserve, protect and promptly deliver into State possession all proprietary information in accordance with paragraph (21).
11. **REMEDIES.** Except as otherwise provided for by law or this Contract, the rights and remedies of the parties shall not be exclusive and are in addition to any other rights and remedies provided by law or equity, including, without limitation, actual damages, and to a prevailing party reasonable attorneys' fees and costs. It is specifically agreed that reasonable attorneys' fees shall include without limitation \$125 per hour for State-employed attorneys. The State may set off consideration against any unpaid obligation of Contractor to any State agency in accordance with NRS 353C.190.
12. **LIMITED LIABILITY.** The State will not waive and intends to assert available NRS chapter 41 liability limitations in all cases. Contract liability of both parties shall not be subject to punitive damages. Liquidated damages shall not apply unless otherwise specified in the incorporated attachments. Damages for any State breach shall never exceed the amount of funds appropriated for payment under this Contract, but not yet paid to Contractor, for the fiscal year budget in existence at the time of the breach. Damages for any Contractor breach shall not exceed 150% of the contract maximum "not to exceed" value. Contractor's tort liability shall not be limited.
13. **FORCE MAJEURE.** Neither party shall be deemed to be in violation of this Contract if it is prevented from performing any of its obligations hereunder due to strikes, failure of public transportation, civil or military authority, act of public enemy, accidents, fires, explosions, or acts of God, including, without limitation, earthquakes, floods, winds, or storms. In such an event the intervening cause must not be through the fault of the party asserting such an excuse, and the excused party is obligated to promptly perform in accordance with the terms of the Contract after the intervening cause ceases.
14. **INDEMNIFICATION.** To the fullest extent permitted by law, each party shall indemnify, hold harmless and defend, the other party from and against all liability, claims, actions, damages, losses, and expenses, including, without limitation, reasonable attorneys' fees and costs, arising out of any alleged negligent or willful misconduct of the non-indemnifying party, its officers, employees and agents that results in personal injury or property damage to such party while on the other party's premises.
15. **INDEPENDENT CONTRACTOR.** Contractor is associated with the State only for the purposes and to the extent specified in this Contract, and in respect to performance of the contracted services pursuant to this Contract, Contractor is and shall be an independent contractor and, subject only to the terms of this Contract, shall have the sole right to supervise, manage, operate, control, and direct performance of the details incident to its duties under this Contract. Nothing contained in this Contract shall be deemed or construed to create a partnership or joint venture, to create relationships of an employer-employee or principal-agent, or to otherwise create any liability for the State whatsoever with respect to the indebtedness, liabilities, and obligations of Contractor or any other party. Contractor shall be solely responsible for, and the State shall have no obligation with respect to:

15. INDEPENDENT CONTRACTOR. Contractor is associated with the State only for the purposes and to the extent specified in this Contract, and in respect to performance of the contracted services pursuant to this Contract, Contractor is and shall be an independent contractor and, subject only to the terms of this Contract, shall have the sole right to supervise, manage, operate, control, and direct performance of the details incident to its duties under this Contract. Nothing contained in this Contract shall be deemed or construed to create a partnership or joint venture, to create relationships of an employer-employee or principal-agent, or to otherwise create any liability for the State whatsoever with respect to the indebtedness, liabilities, and obligations of Contractor or any other party. Contractor shall be solely responsible for, and the State shall have no obligation with respect to: (1) withholding of income taxes, FICA or any other taxes or fees; (2) industrial insurance coverage; (3) participation in any group insurance plans available to employees of the State; (4) participation or contributions by either Contractor or the State to the Public Employees Retirement System; (5) accumulation of vacation leave or sick leave; or (6) unemployment compensation coverage provided by the State. Contractor shall indemnify and hold State harmless from, and defend State against, any and all losses, damages, claims, costs, penalties, liabilities, and expenses arising or incurred because of, incident to, or otherwise with respect to any such taxes or fees. Neither Contractor nor its employees, agents, or representatives shall be considered employees, agents, or representatives of the State. The State and Contractor shall evaluate the nature of services and term negotiated in order to determine "independent contractor" status and shall monitor the work relationship throughout the term of the Contract to ensure that the independent contractor relationship remains as such. To assist in determining the appropriate status (employee or independent contractor), Contractor represents as follows:

	<u>Contractor's Initials</u>	
	YES	NO
1. Does the Contracting Agency have the right to require control of when, where and how the independent contractor is to work?		<u>JM.</u>
2. Will the Contracting Agency be providing training to the independent contractor?		<u>JM.</u>
3. Will the Contracting Agency be furnishing the independent contractor with worker's space, equipment, tools, supplies or travel expenses?		<u>JM.</u>
4. Are any of the workers who assist the independent contractor in performance of his/her duties employees of the State of Nevada?		<u>JM.</u>
5. Does the arrangement with the independent contractor contemplate continuing or recurring work (even if the services are seasonal, part-time, or of short duration)?	<u>JM.</u>	
6. Will the State of Nevada incur an employment liability if the independent contractor is terminated for failure to perform?		<u>JM.</u>
7. Is the independent contractor restricted from offering his/her services to the general public while engaged in this work relationship with the State?		<u>JM.</u>

16. INSURANCE SCHEDULE. Unless expressly waived in writing by the State, Contractor, as an independent contractor and not an employee of the State, must carry policies of insurance in amounts specified in this Insurance Schedule and pay all taxes and fees incident hereunto. The State shall have no liability except as specifically provided in the Contract. The Contractor shall not commence work before:

- 1) Contractor has provided the required evidence of insurance to the Contracting Agency of the State, and
- 2) The State has approved the insurance policies provided by the Contractor.

Prior approval of the insurance policies by the State shall be a condition precedent to any payment of consideration under this Contract and the State's approval of any changes to insurance coverage during the course of performance shall constitute an ongoing condition subsequent this Contract. Any failure of the State to timely approve shall not constitute a waiver of the condition.

Insurance Coverage: The Contractor shall, at the Contractor's sole expense, procure, maintain and keep in force for the duration of the Contract the following insurance conforming to the minimum requirements specified below. Unless specifically specified herein or otherwise agreed to by the State, the required insurance shall be in effect prior to the commencement of work by the Contractor and shall continue in force as appropriate until the latter of:

1. Final acceptance by the State of the completion of this Contract; or
2. Such time as the insurance is no longer required by the State under the terms of this Contract.

Any insurance or self-insurance available to the State shall be excess of and non-contributing with any insurance required from Contractor. Contractor's insurance policies shall apply on a primary basis. Until such time as the insurance is no longer required by the State, Contractor shall provide the State with renewal or replacement evidence of insurance no less than thirty (30) days before the expiration or replacement of the required insurance. If at any time during the period when insurance is required by the Contract, an insurer or surety shall fail to comply with the requirements of this Contract, as soon as Contractor has knowledge of any such failure, Contractor shall immediately notify the State and immediately replace such insurance or bond with an insurer meeting the requirements.

Workers' Compensation and Employer's Liability Insurance

- 1) Contractor shall provide proof of worker's compensation insurance as required of Nevada Revised Statutes Chapters 616A through 616D inclusive.
- 2) Employer's Liability insurance with a minimum limit of \$500,000 each employee per accident for bodily injury by accident or disease.
If this contract is for temporary or leased employees, an *Alternate Employer* endorsement must be attached to the Contractor's workers' compensation insurance policy.
- 3) If the Contractor qualifies as a sole proprietor as defined in NRS Chapter 616A.310, and has elected to not purchase industrial insurance for himself/herself, the sole proprietor must submit to the contracting State agency a fully executed "Affidavit of Rejection of Coverage Under NRS 616.3627 and NRS 617.210" form.

Commercial General Liability Insurance

- 1) Minimum Limits required:

<u>\$2,000,000.00</u>	General Aggregate
<u>\$1,000,000.00</u>	Products & Completed Operations Aggregate
<u>\$</u>	Personal and Advertising Injury
<u>\$1,000,000.00</u>	Each Occurrence
- 2) Coverage shall be on an occurrence basis and shall be at least as broad as ISO 1996 form CG 00 01 (or a substitute form providing equivalent coverage); and shall cover liability arising from premises, operations, independent contractors, completed operations, personal injury, products, civil lawsuits, Title VII actions and liability assumed under an insured contract (including the tort liability of another assumed in a business contract).

Business Automobile Liability Insurance

- 1) Minimum Limit required: \$Waived Each Occurrence for bodily injury and property damage.
- 2) Coverage shall be for "any auto" (including owned, non-owned and hired vehicles).
The policy shall be written on ISO form CA 00 01 or a substitute providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage.

Professional Liability Insurance

- 1) Minimum Limit required: \$Waived Each Claim
- 2) Retroactive date: Prior to commencement of the performance of the contract
- 3) Discovery period: Three (3) years after termination date of contract.
- 4) A certified copy of this policy may be required.

Umbrella or Excess Liability Insurance

- 1) May be used to achieve the above minimum liability limits.
- 2) Shall be endorsed to state it is "As Broad as Primary Policy"

Commercial Crime Insurance

Minimum Limit required: \$Waived Per Loss for Employee Dishonesty
This insurance shall be underwritten on a blanket form amending the definition of "employee" to include all employees of the Vendor regardless of position or category.

Performance Security

Amount required: \$Waived

- 1) Security may be in the form of surety bond, Certificate of Deposit or Treasury Note payable to the State of Nevada, only.
- 2) The security shall be deposited with the contracting State agency no later than ten (10) working days following award of the Contract to Contractor.

- 3) Upon successful Contract completion, the security and all interest earned, if any, shall be returned to the Contractor.

General Requirements:

- a. **Additional Insured:** By endorsement to the general liability insurance policy evidenced by Contractor, *The State of Nevada, Department of Administration, its officers, employees and immune contractors* as defined in NRS41.0307 shall be named as additional insureds for all liability arising from the Contract.
- b. **Waiver of Subrogation:** Each liability insurance policy shall provide for a waiver of subrogation as to additional insureds.
- c. **Cross-Liability:** All required liability policies shall provide cross-liability coverage as would be achieved under the standard ISO separation of insureds clause.
- d. **Deductibles and Self-Insured Retentions:** Insurance maintained by Contractor shall apply on a first dollar basis without application of a deductible or self-insured retention unless otherwise specifically agreed to by the State. Such approval shall not relieve Contractor from the obligation to pay any deductible or self-insured retention. Any deductible or self-insured retention shall not exceed \$5,000 per occurrence, unless otherwise approved by the Risk Management Division.
- e. **Policy Cancellation:** Except for ten days notice for non-payment of premium, each insurance policy shall be endorsed to state that; without thirty (30) days prior written notice to the State of Nevada, c/o Contracting Agency, the policy shall not be canceled, non-renewed or coverage and/or limits reduced or materially altered, and shall provide that notices required by this paragraph shall be sent by certified mailed to the address shown below.
- f. **Approved Insurer:** Each insurance policy shall be:
 - 1) Issued by insurance companies authorized to do business in the State of Nevada or eligible surplus lines insurers acceptable to the State and having agents in Nevada upon whom service of process may be made, and
 - 2) Currently rated by A.M. Best as "A- VII" or better.

Evidence of Insurance:

Prior to the start of any Work, Contractor must provide the following documents to the contracting State agency:

- 1) **Certificate of Insurance:** The Acord 25 Certificate of Insurance form or a form substantially similar must be submitted to the State to evidence the insurance policies and coverages required of Contractor.
- 2) **Additional Insured Endorsement:** An Additional Insured Endorsement (CG20 10 or CG20 26), signed by an authorized insurance company representative, must be submitted to the State to evidence the endorsement of the State as an additional insured per General Requirements, Subsection a above.
- 3) **Schedule of Underlying Insurance Policies:** If Umbrella or Excess policy is evidenced to comply with minimum limits, a copy of the Underlier Schedule from the Umbrella or Excess insurance policy may be required.

Review and Approval: Documents specified above must be submitted for review and approval by the State prior to the commencement of work by Contractor. Neither approval by the State nor failure to disapprove the insurance furnished by Contractor shall relieve Contractor of Contractor's full responsibility to provide the insurance required by this Contract. Compliance with the insurance requirements of this Contract shall not limit the liability of Contractor or its subcontractors, employees or agents to the State or others, and shall be in addition to and not in lieu of any other remedy available to the State under this Contract or otherwise. The State reserves the right to request and review a copy of any required insurance policy or endorsement to assure compliance with these requirements.

Mail all required insurance documents to the Contracting Agency identified on page one of the contract.

17. COMPLIANCE WITH LEGAL OBLIGATIONS. Contractor shall procure and maintain for the duration of this Contract any state, county, city or federal license, authorization, waiver, permit, qualification or certification required by statute, ordinance, law, or regulation to be held by Contractor to provide the goods or services required by this Contract. Contractor will be responsible to pay all taxes, assessments, fees, premiums, permits, and licenses required by law. Real property and personal property taxes are the responsibility of Contractor in accordance with NRS 361.157 and 361.159. Contractor agrees to be responsible for payment of any such government obligations not paid by its subcontractors during performance of this Contract. The State may set-off against consideration due any delinquent government obligation in accordance with NRS 353C.190.

18. WAIVER OF BREACH. Failure to declare a breach or the actual waiver of any particular breach of the Contract or its material or nonmaterial terms by either party shall not operate as a waiver by such party of any of its rights or remedies as to any other breach.

19. **SEVERABILITY.** If any provision contained in this Contract is held to be unenforceable by a court of law or equity, this Contract shall be construed as if such provision did not exist and the nonenforceability of such provision shall not be held to render any other provision or provisions of this Contract unenforceable.

20. **ASSIGNMENT/DELEGATION.** Neither party may assign their respective rights and duties under this Agreement without the consent of the other party, which such consent not to be unreasonably withheld, conditions or delayed; provided T-Mobile and the State may assign in whole or in part their respective rights or duties under this Agreement without prior consent of either party to any parent, affiliate or subsidiary or to any party acquiring all or substantially all of the assigning party's capital stock or assets (including, without limitation, any assignment by operation of law). An assignment of T-Mobile's rights shall not relieve T-Mobile of its obligations to the State.

21. **STATE OWNERSHIP OF PROPRIETARY INFORMATION.** Any reports, histories, studies, tests, manuals, instructions, photographs, negatives, blue prints, plans, maps, data, system designs, computer code (which is intended to be consideration under the Contract), or any other documents or drawings, prepared or in the course of preparation by Contractor (or its subcontractors) in performance of its obligations under this Contract shall be the exclusive property of the State and all such materials shall be delivered into State possession by Contractor upon completion, termination, or cancellation of this Contract. Contractor shall not use, willingly allow, or cause to have such materials used for any purpose other than performance of Contractor's obligations under this Contract without the prior written consent of the State. Notwithstanding the foregoing, the State shall have no proprietary interest in any materials licensed for use by the State that are subject to patent, trademark or copyright protection.

22. **PUBLIC RECORDS.** Pursuant to NRS 239.010, information or documents received from Contractor may be open to public inspection and copying. The State will have the duty to disclose unless a particular record is made confidential by law or a common law balancing of interests. Contractor may label specific parts of an individual document as a "trade secret" or "confidential" in accordance with NRS 333.333, provided that Contractor thereby agrees to indemnify and defend the State for honoring such a designation. The failure to so label any document that is released by the State shall constitute a complete waiver of any and all claims for damages caused by any release of the records.

23. **CONFIDENTIALITY.** Each party receiving information (the "Receiving Party") undertakes to retain in confidence the terms of such information, technology, materials and know-how of the other party disclosed by the nature of the circumstances surrounding disclosure, ought in good faith to be treated as proprietary and/or confidential ("Confidential Information"). The parties acknowledge and agree that this Agreement, including pricing terms and rate plan and Equipment discounts are Confidential Information. Neither party shall use any Confidential Information with respect to which it is the Receiving Party for any purpose other than the fulfillment of this Agreement. Each party agrees to use reasonable efforts to protect Confidential Information of the other party, and in any event, to take precautions at least as great as those taken to protect its own confidential information of a similar nature. Each party shall also notify the other promptly in writing in the event such party learns of any unauthorized use or disclosure of any Confidential Information that it has received from the other party, and will cooperate in good faith to remedy such occurrence to the extent reasonably possible. The restrictions set for in this paragraph shall not apply to any information that: (a) was known by the Receiving Party without obligation of confidentiality prior to disclosure thereof by the other party; (b) was in or entered the public domain through no fault of the Receiving Party; (c) is disclosed to the Receiving Party by a third party legally entitled to make such disclosure without violation of any obligation of confidentiality; (d) is required to be disclosed by applicable laws or regulations (but in such event, only to the extent required to be disclosed); or (e) is independently developed by the Receiving Party without reference to any Confidential Information of the other party.

24. **FEDERAL FUNDING.** In the event federal funds are used for payment of all or part of this Contract:

a. Contractor certifies, by signing this Contract, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency. This certification is made pursuant to the regulations implementing Executive Order 12549, Debarment and Suspension, 28 C.F.R. pt. 67, § 67.510, as published as pt. VII of the May 26, 1988, Federal Register (pp. 19160-19211), and any relevant program-specific regulations. This provision shall be required of every subcontractor receiving any payment in whole or in part from federal funds.

b. Contractor and its subcontractors shall comply with all terms, conditions, and requirements of the Americans with Disabilities Act of 1990 (P.L. 101-136), 42 U.S.C. 12101, as amended, and regulations adopted thereunder contained in 28 C.F.R. 26.101-36.999, inclusive, and any relevant program-specific regulations.

c. Contractor and its subcontractors shall comply with the requirements of the Civil Rights Act of 1964, as amended, the Rehabilitation Act of 1973, P.L. 93-112, as amended, and any relevant program-specific regulations, and shall not discriminate against any employee or offeror for employment because of race, national origin, creed, color, sex, religion, age, disability or handicap condition (including AIDS and AIDS-related conditions.)

25. LOBBYING. The parties agree, whether expressly prohibited by federal law, or otherwise, that no funding associated with this contract will be used for any purpose associated with or related to lobbying or influencing or attempting to lobby or influence for any purpose the following:

- a. Any federal, state, county or local agency, legislature, commission, counsel or board;
- b. Any federal, state, county or local legislator, commission member, counsel member, board member, or other elected official; or
- c. Any officer or employee of any federal, state, county or local agency; legislature, commission, counsel or board.

26. WARRANTIES. Except for any other written warranty that may be provided, and to the extent permitted by law, all services, products and third party products are provided "as is", "with all faults" and without warranties of any kind, either express or implied, including without limit, warranties of title, merchantability, non-infringement, or fitness for a particular purpose, all of which are expressly disclaimed. You assume all responsibility and risk for use of the service or products. We do not authorize anyone to make a warranty of any kind on our behalf, and you should not rely on any such statement. Any statements made in packaging, manuals or other document, or by any of our dealers (except for any written limited warranty that may be provided), are for informational purposes only and are not warranties by us of any kind. We and our officers, directors, employees, agents, dealers, suppliers, parents, subsidiaries or affiliates ("T-Mobile Affiliates") do not warrant that the information, software, products, processes, or services will be uninterrupted, accurate, complete, useful, functional, bug or error free. If you received a written "T-Mobile limited warranty" with your phone, it is the only warranty made by us with respect to the phone. If applicable State law does not allow the disclaimer of certain implied warranties, the relevant portions of the above exclusion may not apply to you.

27. PROPER AUTHORITY. The parties hereto represent and warrant that the person executing this Contract on behalf of each party has full power and authority to enter into this Contract. Contractor acknowledges that as required by statute or regulation this Contract is effective only after approval by the State Board of Examiners and only for the period of time specified in the Contract. Any services performed by Contractor before this Contract is effective or after it ceases to be effective are performed at the sole risk of Contractor.

28. GOVERNING LAW; JURISDICTION. This Contract and the rights and obligations of the parties hereto shall be governed by, and construed according to, the laws of the State of Nevada, without giving effect to any principle of conflict-of-law that would require the application of the law of any other jurisdiction. The parties consent to the jurisdiction of the Nevada district courts for enforcement of this Contract.

29. ENTIRE CONTRACT AND MODIFICATION. This Contract and its integrated attachment(s) constitute the entire agreement of the parties and such are intended as a complete and exclusive statement of the promises, representations, negotiations, discussions, and other agreements that may have been made in connection with the subject matter hereof. Unless an integrated attachment to this Contract specifically displays a mutual intent to amend a particular part of this Contract, general conflicts in language between any such attachment and this Contract shall be construed consistent with the terms of this Contract. Unless otherwise expressly authorized by the terms of this Contract, no modification or amendment to this Contract shall be binding upon the parties unless the same is in writing and signed by the respective parties hereto and approved by the Office of the Attorney General and the State Board of Examiners.

IN WITNESS WHEREOF, the parties hereto have caused this Contract to be signed and intend to be legally bound thereby.

Tom Mackay 9/11/06 Vice President, Business Sales
Independent Contractor's Signature Date Independent Contractor's Title

Greg Smith 9/18/06 Administrator, Purchasing Division
Greg Smith Date Title

[Signature]
Signature - Board of Examiners

APPROVED BY BOARD OF EXAMINERS

Approved as to form by:

On 10-10-06
(Date)

Susan E. Lee
Deputy Attorney General for Attorney General

On 9-19-06
(Date)

ATTACHMENT BB

NEGOTIATED ITEMS

1. **Quarterly Reports:** In the event contractor fails to submit a completed Quarterly Administrative Report pursuant to the dates referenced in Attachment F of the RFP, contractor will be subject to a performance guarantee penalty of one hundred (\$100.00) dollars.
2. **Participating Addendums:** Participating Addendums to Master Service Agreement No. 10-00115 shall survive the assignment from the Original Lead State to the Assigned Lead State, and upon the required approval as specified in paragraph 1, shall be effective subject to the terms and conditions of the contracts entered into as a result of State of Nevada RFP 1523. Once the contracts entered into as a result of State of Nevada RFP 1523 become effective, each Participating Entity shall have the option of negotiating a new participating addendum, or continuing to participate under the existing Participating Addendum.
3. **WSCA Special Terms and Conditions:** The WSCA Special Terms and Conditions are hereby excluded from the State's Solicitation (RFP 1523); Scope of Work. The State will negotiate the WSCA Special Terms and Conditions on behalf of participating entities and upon final negotiations will incorporate the Terms and Conditions through an amendment to the contract. Participating entities may negotiate or include additional terms and conditions through a Participating Addendum (PA) individually with the contractor.
4. **Prorated Charges:** T-Mobile agrees to prorate charges in the event that an outage occurs for more than 24 hours by contacting T-Mobile Customer Care. T-Mobile Customer Care Department will review and provide on a case-by-case basis.
5. **Out-of-Stock Items:** T-Mobile agrees that in the event that a current T-Mobile device is out of stock for three or more days and the ordering entity has not (i) requested an available substitute item or (ii) cancelled the order, T-Mobile will supply customer with a comparable item at no additional cost. This does not apply for defective devices or devices that are damaged by the actions of an end-user.
6. **Shipments:** T-Mobile agrees to take responsibility of equipment until items are signed for by the participating entity at the designated ship to address. Once the shipment is signed for and delivered, all liability moves to the customer.

7. **Limitation of Liability:** T-Mobile and T-Mobile affiliates are not liable to you or any of your employees, agents, customers, other users of your Phone or third parties for any deficiency in performance or quality, caused in whole or in part by an act or omission of an underlying carrier or service provider, website, messaging community, dealer, equipment or facility failure, Phone failure or unavailability, discontinuation of Service, or Phones, network problems, lack of coverage or network capacity, equipment or facility upgrade or modification, delay or failure of number portability, acts of God, strikes, fire, terrorism, war, riot, emergency, government actions, equipment or facility shortage or relocation, the failure of an incoming or outgoing call, including 9-1-1 emergency, priority access, or secured service call, to be connected or completed or for the functionality of location services, including 9-1-1 location services, priority access, or secured call alert services, or causes beyond our reasonable control. IF THE STATE LAW APPLICABLE TO YOUR CLAIMS DOES NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, OR OTHER MODIFICATIONS OF OR LIMITATIONS TO CERTAIN REMEDIES, THE RELEVANT PORTIONS OF THE ABOVE EXCLUSION OR LIMITATION WILL NOT APPLY TO YOU.
8. **Clarification:** The State acknowledges and represents that the limited liability terms contained herein are substantially similar to and are no more restrictive or disadvantageous to Contractor's rights than the limited liability terms agreed to by the other wireless telecommunications carrier(s) awarded contracts pursuant to Request for Proposal No. 1523 and the State. In the event that such terms are more restrictive or disadvantageous to Contractor than those afforded to other said wireless telecommunications carrier(s), such terms applicable to Contractor will be deemed to have been modified and construed to be substantially similar to and no more restrictive or disadvantageous than those afforded to such other telecommunications carrier(s).
9. **Contractor's Response:** Contractor's exceptions to RFP No. 1523 as enumerated in Attachment B shall not supplement, contradict or supersede any State specifications, terms or conditions without written evidence of mutual assent to such change appearing in this Contract; any exceptions to the State's standard contract listed in the Contractor's Response to RFP No. 1523 are not a part of this Contract unless otherwise mutually agreed upon and incorporated in the State's standard contract form as executed by T-Mobile.

Contractor's Initials IM

Agency Initials AS

ATTACHMENT DD

T-MOBILE SPECIAL TERMS AND CONDITIONS FOR WSCA REQUEST FOR PROPOSAL ("RFP")

These T-Mobile Special Terms and Conditions and your Service Agreement Order (if any) shall be in addition to the CONTRACT FOR SERVICES OF INDEPENDENT CONTRACTOR (STATE of NEVADA) that constitute the agreement between _____ (together "Customer", "you" or "your), and T-Mobile USA, Inc. and its affiliates (together, "T-Mobile", "we", or "us") (collectively referred to as the "Agreement). for any wireless services and other telecommunications services that we provide ("T-Mobile Services"), any applications, Phones, or products that you purchase or obtain from us or use with the Service ("Products" or "Units"), and any applications or services that you purchase, obtain, or use that are provided through or with the Service, or billed to your T-Mobile account (together, the "Service"). To the extent these T-Mobile Special Terms and Conditions conflict with the T-Mobile Terms and Conditions you receive with your Phone, these T-Mobile Special Terms and Conditions shall apply.

1. Changes to the Agreement or Charges. EXCEPT TO THE EXTENT PROHIBITED BY LAW, IF WE: (A) INCREASE THE CHARGES INCLUDED IN YOUR MONTHLY RECURRING ACCESS RATE PLAN, OR (B) MODIFY A MATERIAL TERM OF OUR AGREEMENT WITH YOU AND THE MODIFICATION WOULD BE MATERIALLY ADVERSE TO YOU, WE WILL NOTIFY YOU OF THE INCREASE OR MODIFICATION AND YOU CAN CANCEL THAT SERVICE WITHOUT PAYING A CANCELLATION FEE (WHICH IS YOUR ONLY REMEDY) BY FOLLOWING THE CANCELLATION INSTRUCTIONS IN THE NOTICE. IF YOU DO NOT CANCEL YOUR SERVICE BY FOLLOWING THOSE INSTRUCTIONS, OR YOU OTHERWISE ACCEPT THE CHANGE, THEN YOU AGREE TO THE INCREASE OR MODIFICATION, EVEN IF YOU PAID FOR SERVICE IN ADVANCE. IF THE NOTICE DOES NOT SAY HOW LONG YOU HAVE TO CANCEL, THEN IT IS WITHIN **14 DAYS** AFTER THE DATE OF THE NOTICE, UNLESS A LONGER PERIOD IS REQUIRED BY LAW. EXCEPT TO THE EXTENT PROHIBITED BY LAW, CHARGES FOR PRODUCTS, SERVICES, OPTIONAL SERVICES, OR ANY OTHER CHARGES THAT ARE NOT INCLUDED IN YOUR MONTHLY RECURRING ACCESS RATE PLAN (SUCH AS DIRECTORY ASSISTANCE, ROAMING, DOWNLOADS AND THIRD-PARTY CONTENT) ARE SUBJECT TO CHANGE AT ANY TIME WITHOUT NOTICE, AND IF YOU CONTINUE TO USE THOSE SERVICES, OR YOU OTHERWISE AGREE TO THE CHANGES, THEN YOU AGREE TO THE NEW CHARGES. VISIT OUR WEBSITE, RETAIL LOCATIONS, OR CALL CUSTOMER CARE FOR CURRENT CHARGES.

3. Cancellation and Return Policy. There is a Return Period during which you can cancel a newly activated line of Service without paying a cancellation fee. **The Return Period is 14 calendar days from the date of Service activation or 30 days from the Phone's purchase date if you have not activated Service (the Return Period may be longer in some states, such as CA – visit www.t-mobile.com, or ask a sales or customer care representative).** Even if you cancel Service, you must pay all Service and other charges incurred prior to cancellation. In order to receive a refund of the purchase price (minus shipping and rebates) of your Phone, you must return it in "like-new" condition with proof of purchase to the place of purchase during the Return Period along with its original packaging and contents. You may be required to pay a restocking fee. The purchase price of your Phone may have been subsidized to facilitate your subscription to the Service. **If you cancel service and do not return the Phone in "like-new" condition within the Return Period, you will be charged for the difference between the full retail price of the Phone without activation (which may be more than the price with Service activation) and the price you paid for the Phone (minus rebate).**

4. Service Availability and Limits. Service is available to Units only when they within the operating range of T-Mobile's system or the systems of an operator with which T-Mobile has an applicable roaming agreement. Coverage maps Customer may have viewed are only estimates; actual service coverage and quality may vary. There are gaps in Service within the estimated service areas shown on the coverage

maps. Service is subject to unavailability, including emergency situations, transmission limits, network problems or limitations, problems with Customer Units, problems associated with interconnecting carriers, buildings, tunnels, signal strength and atmospheric or topographical conditions, and may be interrupted, dropped, refused, limited, or curtailed. T-Mobile may impose credit, usage or Service limits, suspend Service, or block certain categories of calls (e.g., international, country, 900, 976) in its sole discretion to protect Users or its business. Service shall not be transferred to another market except at T-Mobile's discretion, and T-Mobile may impose transfer fees and limit the markets available for transfers. **T-Mobile is not liable for any Service limits, failures or outages, including without limitation, the failure of a 9-1-1 emergency call to be connected or completed (see Section 11). Location services, including 9-1-1 location services, may not be available in Customer's area and are subject to the Service limitations in this Section 5.**

5. Use of Service. Customer agrees not to resell any aspect of the Service, whether for profit or otherwise. Customer agrees not to modify the Units or use the Service or Units for any fraudulent, unlawful, harassing or abusive purpose, or in such a way as to create damage or risk to T-Mobile's business, reputation, employees, subscribers, facilities, third parties or to the public generally. Customer agrees not to use the Service or Units to send any harassing, threatening, obscene, or unsolicited commercial text, e-mail or other messages. Except as stated in Section 15, Customer has no proprietary or ownership rights to a specific number ("Number"), IP address, or e-mail address assigned to Customer or Customer's Unit. T-Mobile may change Customer's Numbers at any time. Customer may not assign the Numbers to any other Units. Customer shall not program any other Number into the Units. Customer agrees that T-Mobile may contact Customer through the Units or by e-mail to notify Customer of changes to or information about Customer's account or the Service. T-Mobile may deactivate or suspend Service to any Number without prior notice if T-Mobile suspects any unlawful or fraudulent use of the Number. Customer agrees to reasonably cooperate with T-Mobile in investigating suspected unlawful or fraudulent use.

6. Use of Phone with Other Providers/Phone Purchases. Wireless devices and networks do not all use the same technologies. Your Phone may not be compatible with the network and services provided by another wireless service provider and, therefore, may not work with that provider's wireless service. You may buy a Phone from us, or from someone else, but it must be GSM/GPRS equipment that is compatible and approved for use with our network and Services and we do not guarantee that all T-Mobile features will be available with such equipment. A T-Mobile Phone may be programmed to accept only a T-Mobile SIM card.

7. Changes to Your Account. If you give your personal account validation information to someone, they can access and make changes to your account just as you can. You may request to switch to another rate plan, and if we authorize the change, a transfer fee may apply and the new rates will become effective by the start of your next billing cycle. Changes may require your agreement to a new Term (if you select a promotional rate plan or special Phone pricing). If we allow you to temporarily suspend your account, you may continue to pay monthly charges and we may extend the Term for the length of that suspension.

8. Billing, Charges and Late Fees. Customer will be charged for Service and other features on a monthly billing cycle basis and we may change your billing cycle at any time upon reasonable advance notice. **Customer agrees to timely pay in full each month all charges and fees associated with the Service, including without limit, monthly recurring Service charges, charges described in Sec. 10, airtime, roaming, long distance, toll, landline access, messages (whether read or unread, solicited or unsolicited), images, sounds, data, features (such as web access, text messages and voicemail), calling services (such as operator or directory assistance and calling card use), additional or optional services that Customer uses or are processed through your Phone (or Number, IP address or email address assigned to or authorized by Customer).** Customer may be charged for more than one call when Customer uses certain features resulting in multiple inbound or outbound calls (such as call forwarding, call waiting, voicemail retrieval, and conference calling). All lines use and share the airtime and features included in Family or other pooling plans. Mobile to mobile minutes are those used between T-Mobile Phones while on the T-Mobile USA network (and not roaming or affiliate networks). Except to the extent prohibited by law, billing of roaming charges and minutes or Services used may be delayed or applied against included minutes or Services in subsequent billing cycles,

which may cause a User to exceed your included minutes or Services in a particular billing cycle. Roaming and other call rating (such as time of call) depend on the location of the network equipment providing Service for a particular call and not the location of the Phone. For billing purposes, Customer agrees not to rely on indicators on your Phone (such as roaming and call time), which may be inaccurate. **UNUSED MINUTES OR OTHER ALLOTMENTS FROM YOUR RATE PLAN EXPIRE AT THE END OF YOUR BILLING CYCLE AND DO NOT CARRY OVER TO SUBSEQUENT BILLING CYCLES. PARTIAL MINUTES OF AIRTIME USAGE ARE ROUNDED UP AND CHARGED, OR DEDUCTED FROM ANY INCLUDED MINUTES, AS FULL MINUTES; AIRTIME USAGE IS MEASURED FROM THE TIME THE NETWORK BEGINS TO PROCESS THE CALL (BEFORE THE PHONE RINGS OR THE CALL IS ANSWERED) THROUGH ITS TERMINATION OF THE CALL (AFTER YOU HANG UP). FOR BILLING PURPOSES, THE TIME OR DAY (SUCH AS NIGHTS AND WEEKENDS) OF AN ENTIRE CALL IS DETERMINED BY THE TIME THE CALL STARTS. UNLESS OTHERWISE SPECIFIED IN YOUR RATE PLAN MATERIALS, WEEKENDS ARE MIDNIGHT FRIDAY TO MIDNIGHT SUNDAY. NIGHTS ARE 9:00 PM TO 6:59 AM.**

Incorrect Charges. If you believe your bill contains an incorrect charge, you have 90 days from the date of the first bill that contains the charge to notify us or you waive any right to dispute the charge. To notify us, please contact Customer Care at www.t-mobile.com, (800) 937-8997, or 611 from your Phone. We may require you to describe the dispute in writing. Any written communications concerning charges must be sent to the T-Mobile Customer Relations address in Sec. 2. If you accept a credit to resolve an issue, you agree the issue is fully resolved. If Customer Care does not resolve your dispute and you still wish to pursue the matter, follow the dispute resolution process described in Sec. 2. **Payments.** For your payment to be deemed received by us and your account to be timely credited, you must provide with your payment information sufficient to identify you and your account (your account number). If we accept late or partial payments or payments with limiting notations, it will not waive any of our rights to collect all amounts that you owe us and it will not be an accord and satisfaction. If we agree to an alternate payment plan, we may confirm it in any manner, including by electronic means.

9. Taxes & Fees/Regulatory and Administrative Fees. T-Mobile shall bill you for taxes, fees, and other charges (such as sales, use, excise, public utility and other taxes) levied by or remitted to domestic or foreign governments or authorities and imposed on you or us as a result of providing the Service or your Phone ("Taxes & Fees"). Any tax exemption only applies after the date we receive from you acceptable documentation. We will determine, in our discretion, the type and amount of the Taxes & Fees to be billed. These Taxes & Fees may change at any time without notice. We may also bill you for regulatory and administrative fees (\$.86 per line per month as of 12/04) to recover our costs of complying with certain regulatory mandates (in our discretion) and Universal Service Fees ("USF") or similarly imposed charges (the amount or method of calculation of these fees may change at any time without notice to you) except to the extent prohibited by law. Regulatory and administrative fees and USF are not taxes or government required charges. We may impose regulatory and administrative fees whether or not all or some services are used, or available to you, or in your location. We are required to use the residential or business street address you provided us to determine certain Taxes & Fees. If you give us an address (such as a PO box) that is not a recognized street address, does not identify the taxing jurisdictions applicable to the address or does not reflect the service area associated with your Number, you may be assigned a default location for Taxes & Fees calculation, which may result in a higher or lower charge for certain Taxes & Fees and you have 90 days from the date of the first bill that contains disputed Taxes & Fees to notify us or you waive your right to dispute those Taxes & Fees.

10. Disclaimer of Warranties. EXCEPT FOR ANY OTHER WRITTEN WARRANTY THAT MAY BE PROVIDED, AND TO THE EXTENT PERMITTED BY LAW, ALL SERVICES, PRODUCTS AND THIRD PARTY PRODUCTS ARE PROVIDED "AS IS," "WITH ALL FAULTS" AND WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMIT, WARRANTIES OF TITLE, MERCHANTABILITY, NON-INFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE, ALL OF WHICH ARE EXPRESSLY DISCLAIMED. YOU ASSUME ALL RESPONSIBILITY AND RISK FOR USE OF THE SERVICE OR PRODUCTS. WE DO NOT

AUTHORIZE ANYONE TO MAKE A WARRANTY OF ANY KIND ON OUR BEHALF, AND YOU SHOULD NOT RELY ON ANY SUCH STATEMENT. ANY STATEMENTS MADE IN PACKAGING, MANUALS OR OTHER DOCUMENTS, OR BY ANY OF OUR DEALERS (EXCEPT FOR ANY WRITTEN LIMITED WARRANTY THAT MAY BE PROVIDED), ARE FOR INFORMATIONAL PURPOSES ONLY AND ARE NOT WARRANTIES BY US OF ANY KIND. WE AND OUR OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, DEALERS, SUPPLIERS, PARENTS, SUBSIDIARIES OR AFFILIATES ("T-MOBILE AFFILIATES") DO NOT WARRANT THAT THE INFORMATION, SOFTWARE, PRODUCTS, PROCESSES, OR SERVICES WILL BE UNINTERRUPTED, ACCURATE, COMPLETE, USEFUL, FUNCTIONAL, BUG OR ERROR FREE. IF YOU RECEIVED A WRITTEN "T-MOBILE LIMITED WARRANTY" WITH YOUR PHONE, IT IS THE ONLY WARRANTY MADE BY US WITH RESPECT TO THE PHONE. IF APPLICABLE STATE LAW DOES NOT ALLOW THE DISCLAIMER OF CERTAIN IMPLIED WARRANTIES, THE RELEVANT PORTIONS OF THE ABOVE EXCLUSION MAY NOT APPLY TO YOU.

12. Limitation of Liability. T-Mobile and T-Mobile affiliates are not liable to you, or any of your employees, agents, customers or other users of your Phone or third parties for any deficiency in performance or quality, caused in whole or in part by an act or omission of an underlying carrier or service provider, website, messaging community, dealer, equipment or facility failure, Phone failure or unavailability, discontinuation of Service, or Phones, network problems, lack of coverage or network capacity, equipment or facility upgrade or modification, delay or failure of number portability, acts of God, strikes, fire, terrorism, war, riot, emergency, government actions, equipment or facility shortage or relocation, the failure of an incoming or outgoing call, including 9-1-1 emergency, priority access, or secured service call, to be connected or completed or for the functionality of location services, including 9-1-1 location services, priority access, or secured call or alert service, or causes beyond our reasonable control. IF THE STATE LAW APPLICABLE TO YOUR CLAIMS DOES NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, OR OTHER MODIFICATIONS OF OR LIMITATIONS TO CERTAIN REMEDIES, THE RELEVANT PORTIONS OF THE ABOVE EXCLUSION OR LIMITATION WILL NOT APPLY TO YOU.

12. Privacy. Wireless systems use radios to transmit communications over a complex network. We do not guarantee that your communications using the Service or Products will be private or secure, and we are not liable to you for any lack of privacy or security you may experience. You are responsible for taking precautions and providing security measures best suited for your situation and intended use of the Service. We may (but are not required to) monitor, intercept, and disclose your transmissions, location or communications and may disclose your billing, account, calling records, or other information, in good faith reliance on legal process, if required by law or to protect our rights, business, network or customers. We may locate you through our network. Your caller identification (such as your name and Number) even if unlisted may be displayed to others (for example, on the equipment or bill of the person receiving your call or any Internet site you visit). For more information on our privacy policies, please see our privacy notice at www.t-mobile.com/privacy. The way third parties handle and use your personal information is governed by their policies and we are not responsible for their policies, or their compliance with them.

13. Lost or Stolen Phone. If your Phone is lost or stolen ("Lost Phone") you will not be liable for unauthorized airtime charges incurred on the Lost Phone if you: (a) notify us immediately; (b) ask us to deactivate the Lost Phone; and (c) provide within 14 days any reasonable documentation we request, including a police report.

14. Number Portability. You may be able to transfer your Number to another wireless carrier or to bring your number to us. For information about Number Portability, please visit www.t-mobile.com or contact Customer Care at (800) 937-8997 or 611 from your Phone. You may not transfer your Number if your account has been cancelled or suspended, or prepaid account expired. **You remain liable for charges incurred resulting from your Service with us or service with your former carrier, including cancellation fees. If you call 911 after you request a transfer, but before you receive confirmation of completion, the 911 operator may not have accurate information on your identity and location. You must inform the 911 operator of your identity and location immediately upon placing the call.**

15. Digital Millennium Copyright Act ("DMCA") Notice. To the extent in providing Service we may act as a "services provider" (as defined by DMCA) and offer services as online provider of materials and links to third-party sites. As a result, third-party materials that we do not own or control may be transmitted, stored, accessed or made available using the Service. If you believe material available via the Service infringes a copyright, notify us using the notice procedure under the DMCA. We will respond expeditiously to remove or disable access to such material and will follow the procedures specified in the DMCA to resolve the claim. Our designated agent to whom you must address infringement notices under the DMCA is CSC (see Sec. 14).

16. Other Agreements or Warranties. Other Services (such as T-Mobile HotSpot or Equipment Protection) or Products may come with separate written terms or conditions, and warranties that govern their use or purchase. Please see those other agreements or warranties for your rights and duties regarding their use.